IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.776 OF 2004

Yusuf Kasam Rindani (Lakdawala) ... Appellant

V/s.

1. The Municipal Corporation
of Greater Bombay & anr. ... Respondents

Mr.S.P. Kanuga i/b B.P. Shukla for Appellant
Mr.J.Xavier for Respondent No.1
Mr.A.C. Singh i/b P.R. Shah for Respondent No.2

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 12, 2004**

P.C.:

. The impugned order is in respect of a Notice of Motion taken out by the Appellant-plaintiff in a suit filed against the notice issued to him under section 354A of the Bombay Muncipal Corporation Act. By letter dated 26.3.2002 the Corporation permitted the plaintiff to carry out certain repairs to a structure in his possession. The exact nature of repairs permitted by the Corporation are as under:

1. To carry out essential repairs by replacing the existing decayed wooden members of the roof and broken A.C. Sheets of roof by new one.

2. To provide four and a half inch thick brick masonry wall up to 3 feet height and over above with G.I. sheets wall upto the roof. The height of the roof shall be restricted to the height as

mentioned in the rough sketch at overleaf.

3. To carry out repairs to the flooring.

4. To carry out essential repairs to the wooden cabin as shown in the sketch.

2. Since the repairs were not carried out in accordance with the permission granted on 26.3.2002, a stop work notice was issued under section 354A of the Bombay Municipal Corporation Act to the plaintiff on 23.12.2003 requiring him to stop the work. The notice issued under section 354A mentions that the plaintiff had unauthorisedly commenced the work described as follows:

> .. U/a construction of mezzanine floor adm. 12'X31' with ladi coba ladi and iron girder and brick masonary wall adm. 72' in length and about 15' ht. at above address and raising of compound wall.

. The appellant-plaintiff was directed to produce proof, within 24 hours, that the work executed by him had been permitted and approved by the Competent Authority.

3. By his reply of 24.12.2003, the plaintiff stated that there is no work in progress and, therefore, the notice issued was not maintainable since the repair work was concluded in the year 2002 itself. The appellant-plaintiff has nowhere in his reply stated that

he had indeed been given permission to execute the work as mentioned in the notice under section 354A. Furthermore, there is nothing on record to show that the plaintiff had stated anywhere that the repairs have been carried out in accordance with the permission given by the Bombay Municipal Corporation. Even before the trial Court, there was nothing brought on record as seen from the order of the trial Court that the repairs which were carried out by the plaintiff were in accordance with the repair permission. An affidavit has been filed by the Assistant Engineer from the P/South Ward, stating that the Plaintiff has not only violated the repair permission granted but has increased the dimensions of the suit structure for which the Bombay Municipal Corporation will take further action.

4. The learned Advocate for the Plaintiff sought to rely upon the judgment of this Court in the case of *Goverdhan Ramnaresh Singh v/s. The Municipal Corporation of Greater Mumbai* (**Appeal from Order No.257 of 1999**) and **Appeal from Order No.513 of 2003** whereby the provisions of section 354A of the Bombay Municipal Corporation Act have been discussed.

5. Prima facie, it appears that The plaintiff has violated the repair permission granted and, therefore, the Bombay Municipal Corporation had issued 354A notice

while the work was in progress. I see no reason to interfere with the findings of the trial Court.

6. Furthermore, the reliance placed by the learned Advocate for the Plaintiff on the circulars issued by the Corporation for taking action under section 354A also does not support the case of the plaintiff. The stop work notice under section 354A has been issued by the Corporation in respect of the mezzanine floor being constructed, under the guise of repairs. The trial Court has considered all these factors and has dismissed the motion.

7. Appeal from Order dismissed.

8. A prayer is made by the Plaintiff for status quo to be maintained which is vehemently opposed by the Respondents. Prayer rejected.